

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement of
Revoked License of:

HERNANDO BARRIOS,

Operator License No. OPR 10090

Petitioner.

Case No. 2012-59

OAH No. 2015070228

DECISION

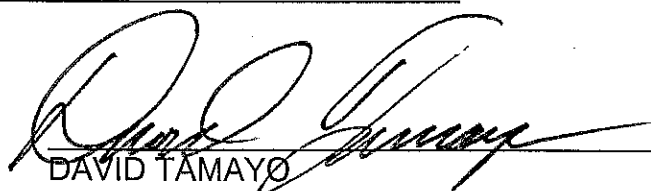
The Proposed Decision of Kimberly J. Belvedere, Administrative Law Judge, in Ontario, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 3, paragraph number 3, "2011" is stricken and replaced with "2013".

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Structural Pest Control Board, Department of Consumer Affairs, State of California.

The Decision shall become effective on September 30, 2015.

IT IS SO ORDERED August 31, 2015.


DAVID TAMAYO
President, Structural Pest Control Board

qualifying manager disassociated with the company on November 29, 2010. Prior to that time, petitioner had served only as the Branch 2 qualifying manager of Black J.

3. On June 19, 2012, an Accusation was filed against petitioner, alleging that the Black J, and petitioner on behalf of Black J, failed to pay fines in connection with multiple citations and also failed to comply with an order of abatement in connection with three of the citations.¹ Two of the citations were specifically issued to petitioner. The outstanding fine in connection with one of petitioner's citations has not been satisfied.²

4. Petitioner did not file a notice of defense and the matter proceeded by default. The board revoked petitioner's operator license effective January 5, 2013.

5. Petitioner filed a petition for reinstatement dated May 5, 2015, seeking reinstatement of his operator's license in both branches 2 and 3.

Petitioner's Evidence

6. Petitioner testified that he takes responsibility for the actions that occurred during the time he served as qualifying manager for Black J and wanted to come to the board hearing to see if there was anything he can do to fix his situation.

7. Petitioner stated that he never knew about the citations that were issued to him or the company until after his license was revoked. Petitioner stated that when he found out, he talked to the owner of the company – his wife – and she informed him that she would take care of the citations and fines. However, after the fines were levied as a result of the default decision and revocations of his license and that of the previous qualifying manager, the company went out of business.

8. Petitioner acknowledged that he should have done something long ago in order to fix the problems that were associated with Black J and the citations that led to the closure of the company. Petitioner stated that the problem "got so big" that he walked away from the pest control business following revocation of his license.

9. Petitioner stated that he worked very hard to get his license in 1999, and has a strong desire to get back into the pest control industry so he can open his own business.

¹ Many of the underlying citations appeared to be issued to the company due to the conduct of the previous qualifying manager prior to the date respondent became the qualifying manager in both branches on December 31, 2010.

² A citation issued on November 15, 2010, levied a \$3,652 fine for multiple violations of the Business and Professions code. A citation issued on November 30, 2011, levied a \$25 fine for a violation of the California Code of Regulations. A total of \$1,000 remains to be paid on the \$3,652 fine.

10. Petitioner stated that he has not completed any continuing education or worked in the pest control industry since his license was revoked.

11. Petitioner did not produce any documentation in support of his petition. Petitioner did not present any character witnesses in support of his petition. Petitioner did not present any evidence of rehabilitation.

12. The Attorney General's Office did not take a position on the petition.

LEGAL CONCLUSIONS

1. In a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) A person seeking reinstatement of a revoked license must present strong proof of rehabilitation, and the showing must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d, 308, 315-316.)

2. Business and Professions Code section 482 requires the board to consider all competent evidence of rehabilitation furnished by the applicant or licensee. Regulations promulgated by the board list the following factors as criteria to determine whether a petitioner has established rehabilitation: nature and severity of the acts; total criminal record; whether the petitioner has complied with any terms of any sanctions lawfully imposed against the petitioner; and any other evidence of rehabilitation. (Cal. Code Regs., tit. 16, § 1937.2, subds. (b) & (c).)

Additionally, the board has promulgated disciplinary guidelines that set forth additional considerations regarding rehabilitation, as follows: type, severity, number and length of violations; whether the violations involved intentional, negligent or unprofessional conduct; actual or potential harm to the public; the length of time since the violations were committed; compliance with any criminal sanctions imposed by the court; prior disciplinary history; petitioner's attitude toward his or her commission of the original violations and in regard to compliance with rehabilitative efforts; efforts to maintain or upgrade professional skills; efforts to establish safeguards to prevent repetition of the misconduct; community service; therapeutic treatment; participation in self-help groups; voluntary restitution to those affected by the misconduct; and any other evidence of rehabilitation submitted by petitioner. (Cal. Code Regs., tit. 16, § 1937.11.)

Evaluation

3. Petitioner has been involved in the structural pest control industry since 1999. His license was revoked in 2011. There have been changes in the industry since that time; however, petitioner did not present any evidence of a continued connection with the industry

or that he has attended any continuing education to ensure that he is up to date on relevant practices and procedures. Petitioner did not present any character witnesses. Petitioner did not support any documentary evidence of rehabilitation in support of his petition.

The board was also troubled by the fact that petitioner, while functioning as a qualifying manager for Black J at the time of the misconduct, did not appear to fully grasp his responsibilities of a qualifying manager. He did not take initiative to ascertain what the problems were or how to fix them. Instead, petitioner, by his own words, "walked away" from the pest control industry.

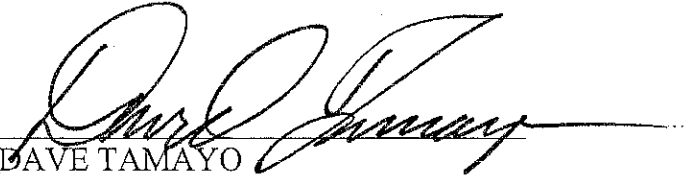
That being said, petitioner appeared to have been involved in a difficult situation at the time the original discipline was imposed; much of the underlying misconduct that led to citations and fines occurred prior to petitioner becoming a qualified manager for Black J. Petitioner is correct, however, that once he became the qualifying manager, he inherited the pre-existing problems of Black J and was responsible to fix them. Further, as a qualifying manager, petitioner had the responsibility to check mail and place himself in a position to know what was occurring with the company at that time. Yet, even once he found out about the citations and outstanding fines, petitioner did not take care of the citations. Four years have passed and the fines have not been paid. At the hearing, petitioner was not even aware of the amounts of the fines still owed. The board must be assured that, if it were to reinstate petitioner's license, he would not only perform licensed work with diligence but would also take initiative to address any problems that might arise in connection with performing the duties of a licensee.

Petitioner was provided with the regulations specifying precisely what evidence is required to establish rehabilitation. While the board is convinced that petitioner is sincere in his desire to re-join the profession, insufficient evidence of rehabilitation was presented to demonstrate that reinstatement of his license would be appropriate at this time. If petitioner desires to petition for reinstatement, he is encouraged to review the board's disciplinary guidelines and more specifically, the rehabilitation criteria, to consider what additional evidence would be useful to the board in order to evaluate his petition.

ORDER

The Petition for Reinstatement is denied.

DATED: July 30, 2015.


DAVE TAMAYO
President,
Structural Pest Control Board
Department of Consumer Affairs
State of California